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Three Conceptions of Power

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POWER IN THE SOCIAL/POLITICAL REALM

JAYNE SEMINARE DOCHERTY*

“Power is nothing more (or less) than the capacity to get *work* done against *time*.”¹

Any metaphor has limitations as well as strengths. The above metaphor of power, taken from physics, is useful for highlighting some features of power in a social encounter such as negotiation.² But taken too far, the metaphor can obscure important features of social reality. In the social realm, unlike the world of physics, the definition of work is debatable, time is malleable, and the mere capacity to use power can influence outcomes in a social encounter.

Getting a car to run faster or more efficiently is a clear measure of work accomplished. But who defines the measurement of success in any given social encounter? Parties may enter a negotiation with very different goals and objectives and, therefore, different ideas about what constitutes work accomplished.

For example, a husband in a divorce negotiation wants to protect his retirement benefits from his wife’s claims. His wife wants compensation for all the years she stayed at home raising their children and for all she did to help him in his career advancement. Both of them could pull out all the stops, hire powerful attorneys, and fight this out to the bitter end. In other words, they could each try to use “*coercive social power*” to achieve their goals.

The concept of coercive social power derives from two common metaphors: “life is a game” and “power is the ability to win the game.” From this perspective, the person or group with the most power gets to have their way on issues of importance. They are able to protect their interests, assure their own well-being, and shape the world around them to their own benefit. Thus, they “win” the competitive game of life.

However, not all relationships are competitive, even if they are conflicted. We do not treat everyone in our lives as rivals in a game. Social relationships, cultural norms, a sense of fairness, and feelings of guilt may mitigate

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1. <http://www.physics.ucla.edu/k-6connection/forwpsa.htm> (last visited January 11, 2004).

2. This definition of power is rooted in a Newtonian paradigm; it does not include all of the complexity introduced by Einstein and others into the world of physics. The conflict resolution world has been slow to embrace metaphors from the “new physics” and many practitioners bring attitudes and practices that still look at power related concepts, such as time, in more fixed, Newtonian ways.

someone's willingness to use coercive social power. Even identity issues influence the way we use power. The identity frames of negotiators, which "describe how parties view themselves, both as individuals and as members of a group,"³ may lead someone to avoid using coercive power even when she can do so. In this case, she may shun the stereotypical image of vindictive first wife, and he may need to see himself as magnanimous and generous to his first wife in order to avoid being stereotyped as someone trading in a faithful life partner for a trophy wife.

So, our hypothetical couple chooses negotiation rather than litigation, and their different definitions of the work to be accomplished in their negotiation actually provide the basis for *integrative* rather than *distributive bargaining*. She drops her claims to his retirement benefits in return for a one-time cash settlement to finance her education and career development. So, was the work accomplished? Neither got exactly what he or she wanted, but they are both relatively satisfied.

Why did they choose this settlement rather than opting to use raw power to coerce the other party? To understand this decision, we need to ask how each of them understood time. In Newtonian physics, we measure time on a fixed linear scale. But *social time* is not just a matter of elapsed minutes or days or years. Social time is the trajectory of a human life; it has value for what we can do in it or what we cannot do in it. Social time has meaning and its value is shaped as much by the quality of the life we live during that time as by the quantity of time we have. In the divorce case, time was a key factor in each party's decision to go for the win-win agreement. He wanted the divorce to be done quickly, because he wanted to marry his girlfriend. She was concerned that time spent getting what she was legally entitled to would be time taken from her opportunity to get an education and restart her career.

How did this couple calculate the value of social time? A Newtonian physics perspective would lead us to think about how this couple traded time. We might even talk about time as something these parties were able to give or to withhold from each other. We might argue that she could have "stolen" his time for a new marriage by hiring a powerful lawyer and fighting for her rights. Or, we might say, he was able to "give" her time for her education with an immediate, large, cash settlement. This perspective might lead to questions such as: Did he pay her not to steal his time for a new marriage? Or, did she accept a bribe not to press her rightful claim?

Who had and who used power in this case? We cannot answer this question unless we recognize that even the capacity and the willingness to use

3. Marcia Caton Campbell & Jayne Seminare Docherty, *What's in a Frame? (That Which We Call a Rose by Any Other Name Would Smell as Sweet)*, 87 MARQ. L. REV. 769, 774 (2004).

power is a form of power in the social world. Unlike the physical world, the mere ability to use power in the social world can influence the actions of the other party in a negotiation. Or, as Russell Korobkin notes below, perceptions matter and the parties in this case did not make a coldly rational decision about which of them had the better “best alternative to a negotiated agreement” (BATNA). To determine the relative merits of fighting or settling, each party had to speculate on the other’s ability and willingness to use *coercive social power* to achieve a desired outcome. He knew she probably had a good legal case, and he believed she would dig in her heels and keep fighting if he did not give her some monetary settlement. She knew that he had deep pockets and could outspend her on attorneys if she persisted in her claims to his retirement. A long, drawn-out court battle would cost her time and opportunity for her education.

On the other hand, maybe they did not actually make their decisions based on a rational calculation of who would win an all out fight and who was willing to engage in such a battle. This may be a case where a Newtonian physics metaphor actually keeps us from understanding the motivations of the parties. The entire preceding analysis of motives and reasons for settling is implicitly rooted in the idea of competition as the norm. Perhaps, in this case the parties actually decided to use “*collaborative power*” to increase the likelihood of mutually desired ends.⁴ The concept of collaborative power rests in yet another metaphor of power, the notion of *power as a “creative force.”* From this perspective, it is possible to conceive of *power with*, rather than *power over*, others, even others with whom one is in conflict. The very concepts of creating new options, expanding the pie, and crafting a win-win option for resolving a conflict rest in the reality of creative power. Parties can work together to build options that were not obvious before, but they must first stop thinking about power as only a force to be wielded against those who would block their desired outcome.

Do we know for sure which forms of power our hypothetical divorcing couple used or pondered using? Not unless we ask them. Even then, they might not be able to tell us exactly what metaphor of power governed their decision making. The truth is, they probably both considered using coercive power, but their decision not to take that road was probably not based solely on a rational analysis of their potential to win the game. Emotions, habits of cooperation, guilt, a desire not to look vengeful or vindictive, and a sense that collaborative power is more dignified and less destructive may all have played into their decision as well.

This is why it is very important for negotiators to understand that power

4. MEDIATION AND FACILITATION TRAINING MANUAL 78 (Carolyn Schrock Shenk ed. 2000).

comes in many forms, and the motivation to use different forms of power in any given situation is a complex process of meaning making, not just a rational choice. Furthermore, even coercive power comes in different forms, and it is important to distinguish among them.

John Gaventa talks about three different forms of coercive social power.⁵ In its most raw form—let's call it "*direct power*"—coercive social power occurs when party A exercises power over party B to get B to do something that B would not otherwise do.⁶ This understanding of power focuses on behavior and it assumes that the real questions to ask when looking at a process such as negotiation are who participates in a process, who gains and loses, and who wins the day.⁷

A second dimension of coercive social power might be called "*process power*." Rather than coercing another person to do something he or she would not otherwise do, process power shapes the playing field, or in this case a negotiation process. Process power is most easily thought of as a party's ability to control the agenda in a negotiation and the power to include or exclude parties from a negotiation. In legal settings, this power is manifested in arguments for and against giving a party standing in a case. There, the judge is deemed the neutral arbiter of fairness. But when attorneys negotiate on behalf of their clients without benefit of a judge's oversight, issues of process power reside with the parties and the attorneys.

An even more insidious form of social power occurs when party A is able to get party B to do what he does not want to do and exercise power over him by influencing or shaping his very wants.⁸ When examining this form of social power, we need to look at "the means through which power influences, shapes, or determines conceptions of the necessities, possibilities, and strategies of challenge in situations of latent conflict."⁹ Notice that this form of social power may make negotiations highly unlikely since the party with a grievance may not even see that he has a grievance to be negotiated.

To this list of coercive power, we might want to add the *power of the spoiler*. Negotiators sometimes forget to look at the larger system within which they are working, and they fail to identify what we might call *secondary parties* to a conflict. The stakeholders in a social conflict may not completely coincide with the parties at the negotiation table. Negotiators

5. JOHN GAVENTA, POWER AND POWERLESSNESS (1982).

6. *Id.* at 5.

7. *Id.*

8. *Id.* at 12; Russell B. Korobkin & Thomas S. Ulen, *Law and Behavioral Science: Removing the Rationality Assumption from Law and Economics*, 88 CAL. L. REV. 1051 (2000).

9. GAVENTA, *supra* note 5, at 15.

should always ask whether there are other stakeholders in the conflict who are likely to be affected by the outcome of a negotiation even if they are not directly involved at this time. These stakeholders may use their power to spoil an agreement if they are not included in the negotiation or consulted about the proposed settlement.

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BARGAINING POWER AS THREAT OF IMPASSE

RUSSELL KOROBKIN**

In an ideal world, all negotiators would have what are sometimes called "common interests."¹ The old chandelier that to me is clutter in the basement would be an antique to you, and your pleasure in receiving it would be outweighed only by my joy in getting rid of it. In most bargaining situations, however, negotiators' interests are in conflict. You might like the chandelier more than I do, which makes a mutually advantageous bargain possible, but it is currently lighting my dining room and I would prefer to keep it rather than give it away. You are interested in buying the chandelier from me, but you want to pay a low price. I will consider selling it to you, but I want a high price. Who will succeed in achieving his goal will most likely depend on who has more bargaining power, defined as the ability to convince the other negotiator to give us what we want even when the other would prefer not to do so.

The source of bargaining power is misunderstood by many negotiators, who wrongly assume that the indicia of success in other realms of life are directly related to power at the negotiating table. Wealth, brains, beauty, political power, prestige, and social influence are nice to have, but none of these items guarantee you the ability to exercise power in any particular negotiation. Bargaining power is situational, not personal. In some labor disputes, unions have more power than management; in others, management has more power than unions. In some merger negotiations, the target company enjoys more power than the suitor; in others, the dynamic is reversed. In some litigation settlement negotiations, the plaintiff has more power than the defendant; in others, the defendant enjoys the advantage. An employee seeking a raise from his boss might enjoy a relative power advantage, or he might not.

In each of these situations, relative bargaining power stems entirely from the negotiator's ability to, explicitly or implicitly, make a single threat credibly: *"I will walk away from the negotiating table without agreeing to a deal if you do not give me what I demand."* The source of the ability to make such a threat, and therefore the source of bargaining power, is the ability to

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1. See e.g., DAVID A. LAX & JAMES K. SEBENIUS, *THE MANAGER AS NEGOTIATOR* (1986).

project that he has a desirable alternative to reaching an agreement, often referred to as a "BATNA."² This essay elaborates on this claim.³

I. BATNA STRENGTH

What you will do in the case of impasse determines your relative power in the negotiation. In market situations with fungible buyers and sellers, your BATNA is to enter into a similar transaction with someone other than your negotiating counterpart and, thus, your power depends implicitly on the forces of supply and demand. Imagine that you arrive at an automobile dealership hoping to pay "dealer invoice" for the car of your choice and begin to negotiate with a dealer who hopes to charge the "sticker price." Your BATNA is to buy the same car from another dealer. The dealer's BATNA is to wait for the next customer to enter the showroom and attempt to sell the car to that customer. If the model you have selected is in short supply and all of the other dealers in town have a waiting list of purchasers, your BATNA is relatively weak (you will have to wait for a car and probably pay a premium) and the dealer's BATNA is relatively strong (he is confident that another customer will be willing to pay the sticker price). The dealer enjoys substantial power because he can threaten impasse if you do not agree to pay the sticker price, and that threat would be credible because impasse would be in his best interest. In contrast, if all dealers are overstocked and the new year's models are soon to arrive, you will enjoy power. You can credibly threaten to walk away if the dealer will not agree to a handsome discount because the chances are good that another dealer anxious to reduce inventory would likely agree to a discount, meaning that impasse would be in your best interest if you do not receive the price that you demand.

If the negotiation situation has an element of bilateral monopoly—that is, comparable transactions are unavailable to the parties—your bargaining power will depend on the relative quality of the substitute transaction you would enter into in the case of impasse. In litigation bargaining, a plaintiff and defendant who fail to reach agreement do not have the option of settling with different parties. Instead, both have the BATNA of submitting to adjudication of the dispute.⁴ Bargaining power depends on whether that

2. See ROGER FISHER ET AL., *GETTING TO YES: NEGOTIATING AGREEMENT WITHOUT GIVING IN* 100 (Bruce Patton ed., 2d ed. 1991) (coining the well-known acronym, short for "Best Alternative to a Negotiated Agreement").

3. For a more elaborate treatment of this subject, see RUSSELL KOROBKIN, *NEGOTIATION THEORY AND STRATEGY* 149-82 (2002).

4. In the case of a low value claim, the plaintiff's BATNA might be to dismiss the suit. But assuming adjudication dominates dismissal for the plaintiff, adjudication will be the plaintiff's BATNA. Usually, negotiating parties have different BATNAs, but notice that in the litigation

BATNA is more desirable for the plaintiff or the defendant. If the plaintiff's case is strong on the legal merits and provable damages are high, the plaintiff will enjoy bargaining power because she can credibly threaten to end negotiations and proceed to adjudication if she does not receive the high settlement price that she demands. The defendant, of course, can make the same threat if the plaintiff will not accept a low settlement offer, but the threat would not be credible because it would not be in the defendant's best interest to take a weak case to court and face the likelihood of a large verdict rather than agree to pay a higher settlement price.

II. PERCEPTION IS REALITY

Strictly speaking, it is not the actual, objective quality of the negotiator's BATNA that determines his degree of bargaining power, but what the counterpart believes that the negotiator believes about the quality of his BATNA.⁵ For example, when an employee receives a job offer from a competing firm and asks his boss for a raise, whether the employee has power depends on whether the boss believes that the employee believes it is in the employee's best interest to accept the competing offer if the demand for a raise is not met. The credibility of the employee's threat to walk away from the negotiation and accept the competing offer if his demand is not met is unaffected by the fact that neither the boss nor any of the employee's colleagues would prefer the competing offer to the employee's current job at his current salary. Where power is concerned, the beauty of a BATNA is in the eye of the beholder, and eccentricity is not penalized as long as it is perceived to be genuine.⁶ The employee's threat of impasse will be credible to the boss, thus giving the employee power, even if the employee himself actually would not prefer the competing offer, so long as the boss thinks that the employee would prefer that offer.

An objectively strong BATNA is helpful, of course, because a BATNA that appears strong renders the negotiator's claim that he *believes* his BATNA is strong more credible. The employee's threat of impasse will more likely translate into bargaining power if his competing job offer is a \$300,000 per

context they have the same BATNA, because a plaintiff who opts for adjudication has the legal right to force the defendant to submit to adjudication also. Of course, the fact that the two parties have the same BATNA (submitting to adjudication) does not suggest that this BATNA has the same *value* to each of them or that they will have the same reservation price. For a more complete discussion, see Russell Korobkin, *A Positive Theory of Legal Negotiation*, 88 GEO. L.J. 1789, 1794-97 (2000).

5. Cf. David Sally, *Social Manuevers and Theory of Mind*, 87 MARQ. L. REV. 893 (2004).

6. As Thomas Schelling wrote, the person who stands on a stranger's porch and threatens to kill himself if the stranger does not give him \$10 is more likely to be paid "if his eyes are bloodshot." THOMAS SCHELLING, *THE STRATEGY OF CONFLICT* 22 (1960).

year CEO position than if it is a \$15,000 per year mailroom attendant position. But either a phantom BATNA (i.e., a nonexistent alternative) or a real BATNA with phantom *value* (i.e., an existent but undesirable alternative) can be a source of power in the hands of a persuasive negotiator.

III. PATIENCE AND POWER

In many bargaining contexts, especially those involving bilateral monopoly, the BATNA of both parties, at least in the short term, will be to continue to negotiate not to pursue a substitute transaction. In this situation, a negotiator's threat not to agree unless her demands are met is in essence a threat of *temporary* rather than permanent impasse. When both parties have a BATNA of temporary impasse, the negotiator for whom temporary impasse is less costly has the strongest BATNA and thus the lion's share of bargaining power. If you have a low cost of temporary impasse, you have the ability to be patient in the negotiations. Thus, it follows that patience translates into bargaining power.

When a union and management meet to attempt to negotiate a settlement of a strike, union members rarely threaten to find substitute employment, and management is precluded by law from firing the striking workers.⁷ The union's threat is that if management does not meet its demands, it will continue to strike. Management's threat is that, if the union does not accede to its terms, it will continue to permit the strike to go on. If the union has a large strike fund and if management cannot fill its orders with the labor of replacement workers, the union can be more patient in reaching an agreement and will enjoy superior bargaining power. In contrast, if the union's strike fund is empty and its members cannot pay their rents while management has a large quantity of inventory in storage, temporary impasse will be relatively more costly to the union, giving management power.

IV. THE RISKS OF POWER

In a world in which opposing negotiators had perfect information about the other's alternatives and preferences and both made all negotiating decisions with cold rationality, attempts to exercise bargaining power would never cause impasse. In any situation in which a mutually beneficial

7. See National Labor Relations Act, 29 U.S.C. § 158(a)(1), (3) (2000). Although not important for the analysis here, the law is actually somewhat more complicated than this statement suggests. Management may legally hire "permanent" replacement workers and consequently refuse to give striking workers their jobs back when the strike ends until there are vacancies. See, e.g., Seth D. Harris, *Coase's Paradox and the Inefficiency of Permanent Strike Replacements*, 80 WASH. U. L.Q. 1185, 1188 (2002).

agreement were possible, the party with relatively less power would yield to the party with relatively more.⁸

Few negotiations, however, are characterized by perfect information and lack of emotion. If both negotiators believe that they have a strong BATNA but that their counterpart does not, each might try to exercise power while neither yields. Thus, lawsuits go to trial, labor strikes drag on, and ethnic warfare continues, even when agreements that would make both sides better off are feasible. Alternatively, or in addition, the less powerful party might resent the sense of coercion or inequity inherent in the more powerful negotiator's demands and refuse to yield, even knowing that this course of action will cause harm to both sides.⁹ These twin possibilities make the exercise of bargaining power as potentially risky as it is potentially rewarding.

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8. Game theorists have demonstrated that, under these assumptions, negotiators would divide the cooperative surplus to be gained from reaching agreement in proportion to their relative costs of impasse. See, e.g., DOUGLAS G. BAIRD ET AL., *GAME THEORY AND THE LAW* 222 (1994).

9. An excellent example is the "ultimatum game," in which Player A proposes a division of a stake—say \$10—and Player B either accepts the proposal, in which case both players receive the allocation proposed by A, or rejects the proposal, in which case both players receive \$0. Although Player B maximizes his income by accepting any nonzero offer, research repeatedly demonstrates that experimental subjects in the role of B often reject low (but nonzero) offers, thus making both players worse off. See, e.g., Ernst Fehr & Simon Gächter, *Fairness and Retaliation: The Economics of Reciprocity*, 14 J. ECON. PERSP. 159 (2000); Werner Guth & Reinhard Tietz, *Ultimatum Bargaining Behavior: A Survey and Comparison of Experimental Results*, 11 J. ECON. PSYCHOL. 417 (1990).

THE PHYSICS OF POWER

CHRISTOPHER HONEYMAN[†]

“Power” is a term much thrown around in discussions of negotiations, but often without much thought as to what it really consists of. As we have seen above, there are at least two parallel sets of conceptions operating in social, political, and legal thinking in our field. The purpose of this essay is to make a modest proposal of a third.

While there are dangers in mechanistic metaphors, there is also a precision in the concept of power as used in physics, which has potential value to negotiators, and may help to clear the air, given that this term is so often used in “loaded” ways. Let’s consider briefly some concepts of power that arise from physics, but appear interesting in negotiation.

The most immediate of these is the one challenged above by Jayne Seminare Docherty, that power is nothing more (or less) than the capacity to get *work* done against *time*. In electrical form, this can be summarized as “volts times amps.” In a car engine, doubling the power means that the car can accelerate to a given speed in half the time (but ignoring friction, which should never be ignored in negotiation: see below).

Acknowledging the objection that opens Docherty’s essay, this conception still has several useful implications when applied to negotiation. The first is that power is distinguishable from two phenomena with which it is frequently confused in practice: influence and celebrity. It is common to hear a person or group described as powerful, when a moment’s reflection by the speaker would admit the likelihood that the person spoken of cannot in fact effectuate anything much in any foreseeable length of time without a lot of help from some other source. The distinction is all-important in understanding what actually happens in negotiations. But it is routinely forgotten, even though there is plenty of well-known lore to support it. For example, this is the essential teaching behind two well-known stories of U.S. Presidents, not only Teddy Roosevelt’s description of the Presidency as “a bully pulpit,”¹ but also Harry Truman’s response to a visitor who remarked on the array of buttons on the President’s telephone: “I can push every one of those buttons, and nothing happens.” (That, at least, was the gist of his reported response.) It is even arguable that the routine press description of a U.S. President as “the most

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1. Respectfully Quoted: A Dictionary of Quotations (1989), available at <http://www.bartleby.com/73/1508.html> (last visited Feb. 6, 2004).

powerful person in the world” has routinely created an imagery to match inside the White House, with the insidious effect of persuading more than one president that he had power to do something, when he in fact did not.

Another potentially valuable concept from physics is that *power is a fixed quantity*: The analogy argues that to whatever degree one person really has power over a given situation, someone else does not. Of course, in the social/political realm, only autocracies really are organized this way. By contrast, influence can be very strong, and yet be shared. Thus, in any society that has political checks and balances, it is likely that when political actors speak of having power, influence is often what they are really discussing.

A change to the language of influence might be more palatable for power-seekers with a little reflection on three other physical analogies. In one, the actual use of power, in physics, uses it up, and there’s plenty of evidence that in many negotiating situations (legal, political or social) the analogy has held up rather well. Unlike power, influence is not necessarily used up when it is used; the wise use of influence may lead to the holder acquiring more. Then, there is the physics principle that “every action (read, exercise of power) creates an equal and opposite reaction.” No one has ever said the same about the exercise of influence, perhaps because the concept of influence carries an overtone of discussion (and hence, of negotiation) rather than of fiat. And finally, it is also worth remarking that when power is exercised and causes an opposite reaction in someone, it must then be exercised against that resistance (in different aspects of physics, friction, electrical resistance, etc.)—and much of it will probably be dissipated ineffectually. In physics, and frequently in negotiations, that usually means “as heat.”

* * *

CONCLUSION

These essays have one thing in common: in their different ways, each hints that there is a positive feedback loop to power; i.e., a reputation for being powerful is itself a source of power. In Docherty’s metaphor, the reputation of the powerful alone may coerce the powerless, and so the latter may become “self-coerced”; in Korobkin’s, the powerful negotiator is credited with a good BATNA without having to demonstrate it; in Honeyman’s, power may be more effective when it is not directly expended.

This, of course, leaves the powerless with the usual uncomfortable choices. One response, the “soft answer that turneth away wrath” is a classic formula in a negotiation for staying focused on what you want, while keeping an overbearing person from either dominating the negotiation or

making negotiation unworkable. Whether the student of negotiation chooses in such a situation to apply the concept of social power to affect the intemperate speaker, the “power to walk” in order to calculate whether to reply softly or go, or the analogies of physics in order to estimate a best response, she is probably better off with a larger toolbox of ways to assess the situation. Here, we have merely sought to offer a choice of metaphors for this, and at least a select range of other negotiating situations. We hope the reader will find the tools as useful as they are varied.

We would like to thank reader David Sally for his insightful comments on a draft of these essays.

APPENDIX: A BRIEF BIBLIOGRAPHY

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